



The Attorney General of Texas

July 11, 1978

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Honorable W. O. Shultz, II
Associate General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701

Open Records Decision No. 196

Re: Whether a preliminary draft of an institutional self-study report is public under the Open Records Act.

Dear Mr. Shultz:

You have received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for a copy of the preliminary draft of an institutional self-study of the University of Texas at Austin prepared in August, 1975. You contend that portions of the draft are excepted from required public disclosure under section 3(a)(11) of the Open Records Act. Section 3(a)(11) is patterned after a similar portion of the Freedom of Information Act, 5 U.S.C. § 552, and is designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 179 (1977), 168 (1977), 163 (1977), 149 (1976), 137 (1976), 128 (1976), 86 (1975), 81 (1975), 29 (1974) and 20 (1974). The exception does not apply, however, when an agency adopts or incorporates by reference an intraagency memorandum in making its final decision. Open Records Decision No. 137 (1976); see NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161 (1975).

In this case there is a final report which has already been made public. In almost every respect it is identical to the preliminary draft, and you have specified six portions of the report which you believe fall in the 3(a)(11) exception. We have examined these segments of the report and have determined five of the six are not covered by section 3(a)(11). The two segments in Chapter Three of the report and the one in Chapter Six which you cite are identical in both the final and preliminary report. The final version of the segments you cite in Chapters Twelve and Thirteen contain all the material found in the preliminary report, although a few paragraphs have been added in the final version and some minor editing changes have been made.

The only substantive change in the recommendations found in the preliminary draft occur in Chapter Nine which is entitled "Faculty." We believe the deletions occurring in this chapter constitute the type of opinions, advice, and recommendations intended to be protected by section 3(a)(11). Accordingly, it is our decision that the preliminary draft of the institutional self-study is required to be made public by the Texas Open Records Act with the exception of pages 9-10 through 9-15. Of course, those pages may be released if the University wishes.

Very truly yours,

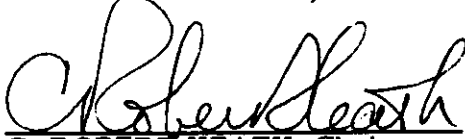


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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